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Opinion following remand

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM LARLOW SEEL, Defendant and Appellant.	B143771 (Los Angeles County Super. Ct. No. KA044436)

ON REMAND from the Supreme Court of the State of California. Reversed in part, affirmed in part, and remanded.

Law Offices of Dennis A. Fischer, Dennis A. Fischer and John M. Bishop for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Robert F. Katz, Donald E. DeNicola and Robert C. Schineider, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted William Harlow Seel on one count of attempted willful, deliberate and premeditated murder (Pen. Code, §§ 187, subd. (a), 664, subd. (a)) and found true the special allegation he had personally and intentionally discharged a firearm in committing the offense (Pen. Code, § 12022.53, subd. (c)).[1] Seel was sentenced to a term of life with the possibility of parole plus 20 years.

In our initial opinion in Seel's appeal of the judgment following his conviction, we rejected Seel's argument the evidence was insufficient to establish he intended to kill his victim John Park, but agreed with his contention there was no substantial evidence of premeditation. (*People v. Seel* (March 21, 2002, B143771) [nonpub. opn.] (*Seel I*).) We rejected all of Seel's other claims of error on appeal. Accordingly, we reversed the finding that the attempted murder had been committed deliberately and with premeditation and, based on the Supreme Court's decision in *People v. Bright* (1996) 12 Cal.4th 652, 656-657, remanded the matter to the trial court "for retrial on the penalty allegation." In all other respects the judgment was affirmed.

The Supreme Court granted review, limited to the issue whether the premeditation allegation may be retried following a reversal on appeal for insufficient evidence. (*People v. Seel* (2004) 34 Cal.4th 535, 540 (*Seel II*).) The Supreme Court concluded, in light of *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435], and related cases, the protections of the double jeopardy clause of the Fifth Amendment to the United States Constitution bar retrial of the premeditation allegation: "The Court of Appeal here found there was 'no evidence' of defendant's deliberation or premeditation in his attempt to commit murder. Because the [Penal Code] section 664(a) allegation effectively placed defendant in jeopardy for an 'offense' [citation], the Court of Appeal's determination of evidentiary insufficiency bars retrial of the allegation under

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[1] Seel was charged in an amended information with four counts of attempted willful, deliberate, premeditated murder. He was found not guilty on the charges relating to three of the four alleged victims.

the federal double jeopardy clause. [Citations.]" (*Seel II*, at p. 550, fn. omitted.)[2] The Court remanded the matter to this court for further proceedings consistent with its opinion.

Because only the propriety of a retrial on the allegation of premeditation was addressed by the Supreme Court in *Seel II, supra*, 34 Cal.4th 550, our initial decision remains determinative on all other issues raised in Seel's appeal. (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 709, fn. 12; see Advisory Com. com. to former Cal. Rules of Court, rule 29.2, 23 pt. 1 West's Ann. Codes, Rules (1996 ed.) foll. rule 29.2(a), pp. 315-316 ["If the Supreme Court decides only limited issues, other issues in the cause will be disposed of by the Court of Appeal as the Supreme Court directs. If the Court of Appeal is not directed to take further action, the original Court of Appeal resolution of the other issues stands as between the parties."].[3]) Accordingly, as set forth in *Seel I*, we affirm the judgment in all respects other than the finding that the attempted murder of victim Park was committed with deliberation and premeditation. Rather than remanding for retrial on the premeditation allegation, however, we now remand to the trial court solely for resentencing.

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[2] The Supreme Court noted that, to the extent its analysis in *People v. Bright, supra*, 12 Cal.4th 652, conflicts with intervening decisions by the United States Supreme Court as discussed in its opinion in this case, it is "no longer controlling." (*Seel II, supra*, 34 Cal.4th at p. 550, fn. 6.)

[3] California Rules of Court, rule 29.2(a) was repealed in 2002 and replaced by rule 29(b); the additions in rule 29(b)(2) and (3) reflected current Supreme Court practice and did not effect a substantive change.

DISPOSITION

The finding with regard to count 4 that the attempted murder of victim Park was committed willfully, deliberately and with premeditation pursuant to Penal Code section 664, subdivision (a), is reversed; retrial of that allegation is barred under the federal double jeopardy clause. The matter is remanded to the trial court for resentencing. In all other respects the judgment is affirmed.

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PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.